IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DR. KATE OSUALA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION No. 00-98
	)	
COMMUNITY COLLEGE OF PHILADELPHIA,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM

Padova, J. **August , 2000**

Plaintiff, Dr. Kate Osuala, brings this action for racial discrimination and retaliation under Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C.A. §§ 2000e - 2000e-17. Plaintiff alleges that she was terminated from her position with Defendant Community College of Philadelphia as a result of racial and national origin discrimination and in retaliation for raising complaints of discrimination. Before the Court is Defendant's Motion for Summary Judgment. For the reasons that follow, the Court will grant Defendant's Motion.

I. BACKGROUND[1]

Dr. Kate Osuala is an African-American woman born in Nigeria. She commenced work for Defendant as General Services Librarian on April 1, 1994. (Pl. Mem. at 4.) She worked for Defendant in this capacity until she was terminated in February 1998. (Id. at 6.)

Throughout her term of employment, Plaintiff's professional competence as a librarian was

[1]The following summary is based on the evidence of record viewed in the light most favorable to Plaintiff, the nonmoving party, as required when considering a motion for summary judgment. Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

never at issue. Rather, beginning shortly after she began work, problems developed in Plaintiff's relationship with library personnel. Plaintiff asserts that these problems stemmed from Defendant's discriminatory focus on Plaintiff's culture and national origin. (Pl. Mem. at 1-2.) Defendant insists that conflicts resulted from Plaintiff's unprofessional, rude, and insubordinate behavior. (Def. Mem. at 2.) Executive Director of Library Services Joan Johnson ("Ms. Johnson") and Plaintiff's immediate supervisor Jerry Fedorijczuk ("Mr. Fedorijczuk") met with Plaintiff on several occasions and sent several memoranda to her between 1994 and October 1996 (Id. at 6-7), but the relationship between Plaintiff and her supervisors continued to deteriorate.

On or before October 1996, Plaintiff sent a memorandum to her Union representative, Rick Bojar, complaining of discriminatory treatment. (Pl. Ex. 6, Fedorijczuk Test. at 953.) On November 19, 1996, Ms. Johnson issued a formal written warning to Plaintiff, threatening disciplinary action should Plaintiff engage in further unprofessional conduct. (Def. Ex. E at 24, Johnson Mem.) On December 2, 1996, Plaintiff filed a grievance with her Union, alleging race and national origin discrimination. (Def. Ex. E at 32-33, Osuala Grievance.)

Plaintiff contends that further discriminatory treatment followed, in retaliation for filing this grievance. (Pl. Mem. at 6.) According to Defendant, Plaintiff's conduct remained unprofessional and inappropriate. (Def. Mem. at 8.) Finally, in March 1997, Ms. Johnson recommended non-renewal of Plaintiff's appointment to Defendant. (Def. Ex. E at 53, Johnson Mem.) Accepting this recommendation, Defendant President Frederick W. Capshaw, Ph.D. gave Plaintiff a terminal appointment for the 1997-1998 academic year. (Id. at 55, Capshaw Letter to Pl.) In September 1997, Defendant Vice President for Academic Affairs Ronald A. Williams, Ph.D. notified Plaintiff that she would not be reappointed for the 1998-1999 academic year. (Id. at 105, Williams Letter to

Pl.) Dr. Williams suspended Plaintiff effective February 12, 1998, for the remainder of the academic year, and she has not worked for Defendant since that date. (Id. at 227, Williams Letter to Pl.)

Arbitration hearings were held on Plaintiff's grievances pursuant to the Collective Bargaining Agreement ("CBA") between Plaintiff's Union and Defendant. These proceedings took place over twelve days between June 1998 and March 1999. (Def. Ex. A, Arbitration Op. at 1.) Arbitrator Walter J. Gershenfeld issued his opinion on September 7, 1999. (Id.) The opinion found no discriminatory action by Defendant, and that Plaintiff's dismissal was for just cause. (Id. at 29-30.) However, the Arbitrator awarded $1,000 to Dr. Osuala for Defendant's procedural errors in the March 1997 notice of non-renewal. (Id. at 30.)

Plaintiff filed the instant Complaint on January 7, 2000. Defendant moved for summary judgment on June 13, 2000. The matter is now fully briefed and ready for decision.

II. LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id. A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317,

322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322.

III. DISCUSSION

Defendant moves for summary judgment on four grounds: (1) that Plaintiff's claims are waived under the terms of her Union's CBA; (2) that Plaintiff's claims are barred by the doctrine of issue preclusion; (3) that Plaintiff cannot make out a prima facie case of discrimination or retaliation; and (4) that even assuming a prima facie case, Plaintiff cannot show that Defendant's proffered non-discriminatory reasons for adverse employment decisions were pretextual. The Court will examine each basis for Defendant's Motion in turn.

A. Waiver

The CBA between Plaintiff's Union and Defendant contains both an anti-discrimination clause and a grievance procedure. The grievance procedure provides for binding arbitration to settle all complaints alleging violation of the CBA, including discrimination complaints. Defendant argues that Plaintiff has waived her right to a judicial forum under the CBA's arbitration and antidiscrimination clauses. (Def. Mem. at 14.) For the reasons that follow, however, the Court concludes that the instant CBA does not serve as a clear and unmistakable waiver of Plaintiff's right to bring a statutory discrimination claim in federal court.

In 1974, the Supreme Court held that "there can be no prospective waiver of an employee's

rights under Title VII." Alexander v. Gardner-Denver Co., 415 U.S. 36, 51 (1974). Revisiting the issue in 1991 in light of trends favoring the use of arbitration to resolve disputes, the Court found that a statutory claim could be the subject of an enforceable binding arbitration agreement. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991). Gilmer, however, involved an individually executed agreement, not a waiver pursuant to a union-negotiated CBA. Id.

In 1998, the Court addressed whether a CBA arbitration clause could waive an employee's right to a judicial forum in an employment discrimination claim. Wright v. Universal Maritime Service Corp., 525 U.S. 70 (1998). The Wright Court found that while a general arbitration clause in a CBA could not waive a statutory discrimination claim, a specific, "clear and unmistakable" waiver might be enforceable. Id. at 79-81. However, because the waiver in Wright did not meet this exacting standard, the Court declined to reach the question of whether an appropriate waiver would indeed be enforceable. Id. at 82.[2]

In the aftermath of Wright, a New York district court found a CBA waiver of a statutory right "clear and unmistakable," and therefore, enforceable. Clarke v. UFI, Inc., 98 F. Supp. 2d 320 (E.D.N.Y. 2000). The Clarke Court reached this conclusion regarding claims of sexual harassment and retaliation because the CBA contained both a specific clause prohibiting sexual harassment and a grievance procedure that prescribed binding arbitration to settle claims under the sexual harassment clause. Id. at 332. On the other hand, a court in this district, albeit in a decision issued several

[2]In finding the Wright CBA too general to waive statutory rights, the Supreme Court noted that it contained "no explicit incorporation of statutory antidiscrimination requirements." Id. at 80. The arbitration clause in Wright generally provided for arbitration of "[m]atters under dispute," but the remainder of the CBA contained no specific antidiscrimination provision. Id. Thus, the Supreme Court did not quantify the amount of statutory language a CBA must contain to qualify as a "clear and unmistakable" waiver.

months before Wright, expressed doubts that Congress intended to permit a CBA to waive an individual employee's rights to select a federal judicial forum under Title VII. Equal Employment Opportunity Commission v. Pathmark Inc., No. Civ. A. 97-3994, 1998 WL 57520, at *4 (E.D. Pa. Feb. 12, 1998). The only United States Court of Appeals for the Third Circuit ("Third Circuit") opinion to address this issue found a CBA enforceable to waive statutory discrimination claims where "the language of the collective bargaining agreement . . . explicitly provide[d] for the mandatory arbitration of statutory discrimination claims." Martin v. Dana Corporation, 114 F.3d 421, 1997 WL 313054, at *9 (3d Cir. June 12, 1997), withdrawn, 114 F.3d 421 (1997), vacated, 114 F.3d 428 (1997), rev'd, 135 F.3d 765 (1997).[3] The divided Martin opinion, however, was subsequently vacated by the Third Circuit. Martin v. Dana Corporation, 135 F.3d 765 (3d Cir. 1997). Therefore, it has no precedential value. The majority view among the Circuit courts remains that mandatory arbitration clauses in CBAs are unenforceable for statutory discrimination claims. See Jacob E. Tyler, Mandatory Arbitration of Discrimination Claims Under Collective Bargaining Agreements: The Effect of Wright, 4 Harv. Negotiation L. Rev. 253, n.69 (1999) (discussing the split among Circuit courts on this issue).

Defendant argues that the instant CBA contains a specific anti-discrimination clause, as well as a grievance and binding arbitration provision. Because any complaint alleging violation of the CBA comes under the grievance procedure, which includes binding arbitration, Defendant contends

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[3]The Martin CBA provided:

> Any and all claims regarding equal employment opportunity provided for under this Agreement or under any federal, state or local fair employment practice law shall be exclusively addressed by an individual employee of the Union under the grievance and arbitration provisions of this Agreement.

Id.

that all discrimination claims, including statutory claims, are explicitly subject to binding arbitration. Relying heavily on Clarke, Defendant thus concludes that the instant CBA meets the Wright Court's requirements for a "clear and unmistakable" waiver of the right to a judicial forum, and therefore should be enforced. The Court does not agree.

The anti-discrimination clause in the instant case, Article IV(A) of the CBA, states that:

> Neither the Board nor the Federation shall discriminate against any Employee because of race, creed, color, national origin, sex, age, marital status, sexual orientation or membership in (or lack thereof) or activities on behalf of the Federation or any other organization or for any other reason violative of law.

(Def. Ex. K at 7.) The grievance procedure, Article XXII, declares that:

> A grievance is an allegation or complaint that there has been a breach, violation . . . or a deviation from, the terms of this Agreement or of any policy, practice, or procedure which relates to wages, hours, or working conditions.

(Def. Ex. K at 84.) The grievance procedure further provides that if the parties cannot resolve a grievance they may "submit the matter . . . for binding arbitration," and "the decision of the arbitrator shall be final and binding upon the parties . . ." (Id. at 86). Thus, in order to conclude that all discrimination claims are subject to binding arbitration, these clauses must be read together. This was the approach taken by the Clarke Court, which this Court understands to have determined that a CBA which recites discrimination claims and also contains a grievance procedure prescribing binding arbitration for such claims sufficiently meets the clear and unmistakable standard of Wright. This Court departs from the Clarke rationale. Rather, this Court concludes that in order to constitute a clear and unmistakable waiver, a CBA must explicitly cover federal statutory claims and must contain clear and unmistakable waiver language. The instant CBA falls far short of these requirements. There is no clause in the instant CBA comparable to that in Martin explicitly

providing that all statutory claims shall be exclusively addressed through binding arbitration. Nor does this CBA contain a provision explicitly stating that the employee agrees to arbitrate all statutory discrimination claims, and waives any later right to a judicial forum. Any waiver of statutory rights here is at best implicit, rather than explicit. Thus, even if the law would allow a "clear and unmistakable" CBA waiver of statutory discrimination claims to be enforced, the Court concludes thatthis waiver does not meet the Wright standard. Therefore the Court will not grant summary judgment based on this threshold issue.

B. Issue Preclusion

Defendant next contends that Plaintiff's claims are precluded from relitigation because the issues were already decided in the previous arbitration.

Issue preclusion, also known as collateral estoppel, prevents parties from relitigating issues that have been adjudicated previously on their merits. Witkowski v. Welch, 173 F.3d 192, 198 (3d Cir. 1999). The requirements for applying the doctrine of issue preclusion are: (1) that the issue previously decided is identical with the one later presented; (2) that there was a final judgment on the merits; (3) that the party against whom issue preclusion is asserted was a party or was in privity with the party to the prior adjudication; and (4) that the party against whom issue preclusion is asserted had a full and fair opportunity to litigate the issue in question in the prior adjudication. Id. at 199. However, the "application of collateral estoppel from arbitral findings is a matter within the broad discretion of the district court." Giles v. City of New York, 41 F. Supp. 2d 308, 313 (S.D.N.Y. 1999) (quoting Universal Am. Barge Corp. v. J-Chem, Inc., 946 F.2d 1131, 1137 (5th Cir. 1991)). Thus, "[i]ssue preclusion based on a prior arbitration is permissible, but not mandatory." Id.

The arbitrator in the instant case addressed a charge of discrimination, but this charge was

not clearly delineated as a statutory claim under Title VII. (Def. Ex. A. at 2.) Moreover, the arbitration did not specifically address a retaliation claim. (Id.) Thus, the claims Plaintiff presents to this forum are not clearly identical with those addressed in the arbitration proceeding. Under these circumstances, the Court declines to exercise its discretion to apply the doctrine of issue preclusion to Plaintiff's claims.

C. Prima Facie Case

In the absence of direct evidence of discrimination, the burden shifting paradigm of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) applies to a Title VII case. The United States Court of Appeals for the Third Circuit ("Third Circuit") interpreted the McDonnell Douglas approach in the context of summary judgment motions in Fuentes v. Perskie, 32 F.3d 759 (3d Cir.1994).

Fuentes dictates that the plaintiff bears the initial burden of establishing a prima facie case of employment discrimination. Fuentes, 32 F.3d at 763. If the plaintiff makes a prima facie showing, the burden of production then shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employer's rejection." Id. (citation omitted). The defendant satisfies this burden "by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." Id. If the defendant carries this relatively light burden by articulating a legitimate reason, however, "the burden of production rebounds to the plaintiff, who must now show, by a preponderance of the evidence, that the employer's explanation is pretextual." Id.

(i) Racial and National Origin Discrimination

In McDonnell Douglas, a failure-to-hire case, the Supreme Court outlined a four-prong test

a plaintiff must meet to establish a prima facie case of discrimination: (i) that she was a member of a protected class; (ii) that she was otherwise qualified for the position; (iii) that, despite her qualifications, she was rejected; and (iv) that, after her rejection, the position remained open and the employer continued to seek applicants of the plaintiff's qualifications. McDonnell Douglas, 411 U.S. at 802. In a case of discriminatory discharge, the Third Circuit interpreted the fourth prong to require the plaintiff to show that she was discharged under circumstances that give rise to an inference of unlawful discrimination. Pivirotto v. Innovative Systems, Inc., 191 F.3d 344, 357 (3d Cir. 1999). While common circumstances giving rise to an inference of unlawful discrimination include the more favorable treatment of similarly situated colleagues outside of the relevant class or the replacement of a plaintiff by someone outside her protected class, the Pivirotto Court explicitly stated that a plaintiff can make out a prima facie case even without demonstrating such circumstances. Id. Nevertheless, the plaintiff still "must prove by a preponderance of the evidence that a prima facie case of discrimination exists. It does not suffice to suggest the mere possibility of discrimination." Bullock v. Children's Hospital of Philadelphia, 71 F. Supp. 2d 482, 490 (E.D. Pa. 1999).

In the instant case, the parties agree that Plaintiff meets the first three prongs of the prima facie test. She is a Nigerian born African-American woman who was qualified for the job from which she was terminated by Defendant. The parties disagree about the fourth prong. Because Plaintiff fails to present evidence that she was terminated under circumstances giving rise to an inference of discrimination, the Court finds that she fails to establish a prima facie case.[4]

[4]The Court notes that both parties misstate the applicable fourth prong. Defendant incorrectly argues that Plaintiff must show that "other employees not in the protected class were treated more favorably." (Def. Mem. at 25.) Plaintiff erroneously concludes that the fourth

Plaintiff charges that Executive Director of Library Services Joan Johnson took the "unusual action . . . before Plaintiff even set foot upon defendant's campus" of directing "the Library personnel to focus upon Plaintiff's different national origin vis a vie [sic] theirs." (Pl. Mem. at 9.) She accuses Ms. Johnson of acting "with such animus to adversely effect the terms and conditions of Plaintiff's employment." (Id.) Had Plaintiff substantiated these charges, a prima facie case clearly would be established. However, in support of her contention, Plaintiff submits the following memorandum from Ms. Johnson to the library personnel:

> I am happy to tell you that the position of General Services Librarian has been filled. Dr. Kate Osuala has accepted the job and will be starting here at the beginning of April. She will be taking over Jerry Fedorijczuk's former position supervising work-study students and overseeing the Reserve and Periodical areas, as well as working at the Reference Desk. Jerry will continue to oversee interlibrary Loan.
>
> Dr. Osuala is from Nigeria and comes to us from a position at the Free Library of Philadelphia.

(Pl. Ex. 1.) The mere mention of Dr. Osuala's birthplace provides no evidence that Ms. Johnson was focusing on Plaintiff's national origin with discriminatory "animus." Thus, the Court can draw from this memorandum no inference of unlawful discrimination.

Plaintiff further alleges discriminatory conduct on the part of Executive Director Johnson, Acting College President Ronald Williams, and Plaintiff's immediate supervisor Jerry Fedorijczuk. An overall review of the arbitration hearing and deposition testimony provided by Plaintiff fails to support these allegations.[5]

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prong "does not have to be present to make out a prima facie case." (Pl. Mem. at 9.)

[5]The Court notes that Plaintiff provides no specific citations in support of her charges. Rather, she supports her specific charges of discriminatory conduct with global citations to

Plaintiff asserts that Ms. Johnson "**admitted**" [Plaintiff's emphasis] that she took no disciplinary action against white and non-African immigrant library employees for "the same type of allegedly rude and confrontational behavior for which she disciplined Plaintiff and for which she recommended the firing of Plaintiff." (Pl. Mem. at 10.) Plaintiff further asserts that Ms. Johnson admitted "that no other Librarian was disciplined for what turned out to be anonymous/fictitious student complaints except for Plaintiff." (Pl. Mem. at 11.) In contrast with these assertions, nowhere in Ms. Johnson's testimony does she state that "fictitious" student complaints were actually used to buttress the case for termination of Plaintiff. Moreover, rather than indicating that non-African librarians were not disciplined for the same conduct exhibited by Plaintiff, Ms. Johnson states, "I have never, in my experience in the library, had the level or degree of student complaints I have had about Dr. Osuala." (Pl. Ex. 4, Johnson Test. at 507-08.) She acknowledges receiving occasional complaints about other librarians, but clearly emphasizes that complaints about Dr. Osuala were far greater in number and significance than those about any other librarian. Thus, because no other librarian's conduct approached that of Dr. Osuala, Defendant's failure to discipline other librarians does not create an inference of discrimination. See St. Hilaire v. The Pep Boys -- Manny, Moe and Jack, 73 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) (stating that in determining whether similarly situated employees are more favorably treated, "the quantity and quality of the comparator's misconduct [must] be nearly identical to prevent courts from second-guessing employers' reasonable decisions and confusing apples with oranges"). Other allegations about the failure of Ms. Johnson to similarly discipline the library "classified staff" are inapposite. These employees were Plaintiff's

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approximately 80 pages of Ms. Johnson's testimony at the arbitration hearings, approximately 50 pages of Dr. Williams' deposition testimony, and approximately 75 pages of Mr. Fedorijczuk's arbitration hearing testimony.

subordinates, and therefore not similarly situated to Dr. Osuala.

Plaintiff similarly makes sweeping conclusions about Dr. Williams' testimony, without providing a specific supporting citation: "Dr. Williams ***admits*** he had evidence of other Librarians at defendant engaging in the same behavior for which Plaintiff was fired yet who were not disciplined. . ." (Pl. Mem. at 11.) Dr. Williams, like Ms. Johnson, acknowledged that there were complaints about other librarians. (Pl. Ex. 5, Williams Depo. at 63-68.) Nowhere in his deposition, however, does he say that these librarians were engaging in the same behavior for which Plaintiff was fired. Instead, Dr. Williams testified that he never received a similar number of complaints of unprofessional, insubordinate conduct about any other librarian. (Def. Reply, Ex. A, Williams Depo. at 74-75.) Rather than resulting merely from isolated complaints of rude behavior, Dr. Williams described Dr. Osuala's firing as stemming from her refusal to take direction from her supervisors, which resulted in a "state of anarchy" in the library. (Id. at 22.) Plaintiff apparently contends that all complaints of "rude behavior" mandate the same discipline by employers regardless of the specific nature of the behavior and the number of occurrences in order to avoid an inference of discrimination. The Court cannot subscribe to this conclusion. Under these circumstances, Plaintiff's charges of discrimination amount to no more than mere speculation. See Bullock, 71 F. Supp. 2d at 490 (discussing the difference between speculation and inference, and concluding that "a prima facie case of discrimination requires more than . . . speculation").

In support of her claim of discriminatory treatment, Plaintiff quotes Mr. Fedorijczuk as asking her "when are you going back to Nigeria?" (Pl. Mem. at 13.) In his deposition, however, Mr. Fedorijczuk explained,

> I . . . did not constantly ask her if she's going back to Africa. I did on

> one occasion ask her during early summer if she was planning a trip back to Nigeria because she had gone the summer before, strictly just conversational things.

(Def. Ex. C, Fedorijczuk Depo. at 724.) When he learned that she took offense to the comment, he apologized. (Id. at 725.) Thus, Plaintiff has not shown that this comment was motivated by discriminatory animus. Moreover, Mr. Fedorijczuk's deposition shows that the comment was made sometime prior to August 1996, at least seven months before Plaintiff received notice of non-renewal. (Id. at 724.) Regardless of the speaker's intent, this exchange took place too long before Plaintiff's termination to by itself establish discharge under circumstances giving rise to an inference of discrimination. See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 545 (3d Cir. 1992) (concluding that "[s]tray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision").

Finally, Plaintiff's assertion that her position "is now split between 2-3 employees not within her protected class," if substantiated, could establish the fourth prong of the prima facie test. (Pl.. Mem. at 4,16.) Plaintiff, however, provides as her only documentation for this claim, a collection of approximately fifty W-2 forms of library personnel. (Pl. Ex. 19.) These forms do not establish that Plaintiff was replaced by individuals outside her protected class. In its Response to Plaintiff's Request for Admission No. 6, Defendant asserts that an African-American woman now performs Plaintiff's duties. (Def. Ex. M.) Thus, Plaintiff's bare assertion is insufficient to create an inference of discrimination.

The Court has carefully reviewed all Plaintiff's claims that could possibly support the fourth prong of the prima facie test, and concludes that she has not met her burden. However, the Court

will continue its inquiry and examine whether Plaintiff has provided evidence to show that Defendant's proffered legitimate reasons for its actions are pretextual. Before doing so, the Court will analyze whether Plaintiff has established a prima facie case of retaliation.

(ii) Retaliation

To establish a prima facie case of retaliation, Plaintiff must show that: (1) she was engaged in a protected activity; (2) the employer took an adverse employment action against Plaintiff after or contemporaneous with her engagement in that protected activity; and (3) a causal link existed between the protected activity and the adverse employment actions. Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir. 1991) (citing Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989)). Thus, while timing alone may be sufficient in unusual factual situations, "the mere fact that adverse employment action occurs after a complaint will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two events." Robinson v. City of Pittsburgh, 120 F.3d 1286, 1301 (3d Cir. 1997).

Defendant argues that Plaintiff has not established a prima facie case of retaliation. Plaintiff counters by alleging that she received her first formal warning about her conduct in November 1996, one month after she complained about discriminatory treatment. (Pl. Mem. at 10.)[6] Plaintiff provides nothing further to establish a causal link between her complaint and adverse employment

[6]The Court notes that Plaintiff provides no specific citation for this allegation, referring instead to this "admission" as "buried in Johnson's Arbitration testimony." (Pl. Mem. at 10.) In the testimony provided, Ms. Johnson acknowledges that she issued the first written warning in November 1996. (Pl. Ex. 4, Johnson Test. at 534.) However, her testimony is unclear about when the warning was issued in relation to Plaintiff's written complaint of discrimination. (Id. at 543.) Mr. Fedorijczuk (who did not issue the warning) indicated that he "may have" received a copy of Plaintiff's memorandum to the Union representative claiming discrimination in October 1996. (Pl. Ex. 6, Fedorijczuk Test. at 953.)

action. To the contrary, the record shows that there had been numerous discussions with Plaintiff about inappropriate behavior in the two years before she first complained of discrimination. (Def. Mem. at 6-7.) While she made an informal complaint prior to the warning, she only filed a formal grievance alleging discrimination one month after the warning, in December 1996. (Def. Ex. E at 32-33, Osuala Grievance.) She was notified of non-renewal in March 1997, and was suspended from employment in February 1998. The Court finds that in this context of ongoing problems long before her first complaint, and the length of time between the complaint and her ultimate termination, the facts do not support a prima facie case of retaliation based on timing alone.

Finally, Plaintiff offers the putative "nearly 70% drop" in her salary after she complained of discrimination as evidence of retaliation. (Pl. Mem. at 3.) However, as Defendant points out, the reduction in Plaintiff's 1998 annual earnings actually occurred because she was terminated from employment after working for only two months in 1998. (Def. Reply at 3.) Dr. Williams' letter suspending Plaintiff documents that she received her salary through March 31, 1998. (Id., Ex. B.) Thus, Plaintiff's 1998 earnings were reduced compared with 1997 because of her termination, not because of any reduction in salary. There simply is no support in the record for Plaintiff's contention that her salary was decreased after she complained of discrimination.

Although Plaintiff has not made out a prima facie case for discrimination or retaliation, the Court will nevertheless proceed to consider whether Plaintiff can show that Defendant's reasons for its adverse employment actions were pretextual.

D. Pretext

Under the burden-shifting paradigm of McDonnell-Douglas as explicated by Fuentes, the burden now shifts to Defendant to articulate a "legitimate, nondiscriminatory reason" for Plaintiff's

termination. Fuentes, 32 F.3d at 763. Should Defendant carry this "relatively light burden," Plaintiff must then show, by a preponderance of the evidence, that Defendant's explanation is pretextual. Id.

Defendant argues that Plaintiff was discharged for "continued rude, abrasive and inappropriate behavior and her insubordination toward her supervisors." (Def. Mem. at 32.) Defendant contends it was forced to terminate Plaintiff because her "unprofessional and insubordinate behavior substantially harmed the functioning of the Library at the College." (Def. Mem. at 38.) In light of the documentation provided by Defendant in support of its reasons, the Court concludes that Defendant has satisfied its burden of articulating legitimate, non-discriminatory reasons for terminating Plaintiff.

In order to survive a motion for summary judgment by showing that Defendant's explanation is pretextual,

> [T]he plaintiff generally must submit evidence which: (1) casts sufficient doubt upon each of the legitimate reasons proffered by the defendant so that a factfinder could reasonably conclude that each reason was a fabrication; or (2) allows the factfinder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action.

Fuentes, 32 F.3d at 762.

The Fuentes Court also addressed the nature and quantum of evidence that Plaintiff must adduce on the issue of pretext.

> [T]he plaintiff must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action. . . [A] plaintiff who has made out a prima facie case may defeat a motion for summary judgment by either (i) discrediting the proffered reasons, either circumstantially or directly, or (ii) adducing evidence, whether circumstantial or direct, that discrimination was more likely than not a motivating or determinative cause of the adverse employment

> action. . . [T]he non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for [the asserted] non-discriminatory reasons.

Id. at 764-765 (internal quotations and citations omitted). Furthermore, "[t]o discredit the employer's proffered reason, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent." Id. at 765.

The Court finds that Plaintiff has not come forward with competent evidence, as defined in Fuentes, to demonstrate that a genuine issue of fact exists as to pretext. While Plaintiff's Memorandum is rampant with assertions that the actions of Ms. Johnson, Dr. Williams, and Mr. Fedorijczuk were motivated by racism and retaliation, the record provides no support for these assertions. As described previously (see supra Part III.C), Plaintiff provides no specific record citations to support her charges, and the Court's overall review of the depositions provided results in the conclusion that the charges are unfounded. Bare assertions of discriminatory motives do not meet the Fuentes standard. Moreover, Plaintiff has utterly failed to demonstrate any weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in Defendant's proffered legitimate reasons for its conduct with respect to Plaintiff's termination.

Because Plaintiff has failed to submit any evidence which tends to negate or cast doubt on Defendant's proffered legitimate non-discriminatory reasons for its action, she has failed to meet her Fuentes burden of persuasion. Accordingly, the Court will grant Defendant's Motion for Summary Judgment and will grant judgment in favor of Defendant and against Plaintiff.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DR. KATE OSUALA, Plaintiff, vs. COMMUNITY COLLEGE OF PHILADELPHIA, Defendant.	)	CIVIL ACTION No. 00-98

ORDER

AND NOW, this day of August, 2000, upon consideration of Defendant's Motion for Summary Judgment (Doc. No. 25), Plaintiff's Response thereto (Doc. No. 27), and Defendant's Reply (Doc. No. 38), **IT IS HEREBY ORDERED** that:

1. Defendant's Motion (Doc. No. 25) is **GRANTED**;

2. Judgment is **GRANTED** in favor of Defendant and against Plaintiff; and

3. The Clerk of Courts shall close this case for statistical purposes.

BY THE COURT:

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John R. Padova, J.